IN THE HIGH COURT OF BOMBAY, AT GOA, PANAJI

COMPANY PETITION NO. 16-C OF 2004

Chowgule and Company Limited
a Company incorporated under
the Companies Act, 1956,
having its registered office
at Chowgule House, Mormugao
Harbour,Goa 403803. ..... Petitioiner.

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. E.P. Badrinarayanan, Addl. Central Govt. Standing Counsel for the Department of Company Affairs.

CORAM : B.H.MARLAPALLE, J

Date : December 10, 2004

ORAL ORDER :

UPON the Petition of Chowgule and Company Limited the Petitioner Company abovenamed, presented to this Honorable Court on 13th Oct 2004 for sanction of the Scheme of Amalgamation between Mandovi Pellets Ltd (' 'the Transferor Company'), and Chowgule and Company Limited ('the Transferee Company') and their respective shareholders AND for other consequential reliefs as mentioned in the Petition AND the said Petition being this day called on for hearing and final disposal.

2. AND UPON READING the said Petition and the Affidavit of Mr. R B. Bilguche, the Authorized Signatory Company Secretary and General Manager of the Petitioner Company solemnly affirmed on 12th day of October 2004, verifying the said Petition AND UPON READING the affidavit of Mr. R. B, Bilguche, Company Secretary and General Manager of the Company dated 5th day of November proving the service of notice of the hearing of the Petition upon the Regional Director, Department of Company Affairs, Maharashtra, Mumbai, and also proving publication of the notice of the date of hearing of the Petition in the issue of “The Navahind Times" in English and “Gomantak” in Marathi, circulated in Goa, dated 27h day of October 2004.

3. AND UPON READING the order dated 20th day of August 2004 made by this Hon'ble Court in Company Application No. 48-C of 2004 whereby the Petitioner Company was directed to dispense with the meetings of the shareholders of the Petitioner Company to consider and approve the proposed Scheme of Amalgamation AND by the order dated 1st day of October 2004 convening and holding of the meetings of the Secured and Unsecured Creditors of the Petitioner Company to consider and approve the proposed Arrangement embodied in the Scheme of Amalgamation was dispensed with in view of the averments made in the affidavit in support of the Company

4. AND UPON HEARING Mr. Mahesh S. Sonak, Advocate for the Petitioner Company that the Scheme of Amalgamation also does not affect the rights and interest of the creditors of the Transferee Company as the Petitioner Company has substantial assets in excess of its liabilities AND in view of the said facts AND UPON HEARING Mr. Mahesh S. Sonak , Advocate for the Petitioner Company and E. P. Bardinarayan, Additional Central Government Counsel Standing for Department of Company Affairs and submits that in the Scheme there is no specific provision for the cancellation of shares of the Transferee Company in the Transferor Company and thus such holding should be treated as cancelled and no shares of Transferee Company shall be allotted to them. He further submit that in view of clause 3.2 of the Scheme it is proposed to increase the authorised Capital of the Transferee Company from Rs.6,00,00,000/- to Rs.20,50,58,000/- and as such the Transferee Company is required to file Form 5 with the Registrar of Companies with payment of stamp duty and requisite fees as per Section 97 of the Companies Act, 1956. Subject to above he has no other objection to the proposed Scheme of Amalgamation AND no other person or persons entitled to appear at the hearing of the petition appearing this day either in support of the petition or to show cause against the same.

5. THIS COURT DOTH HEREBY SANCTION the said arrangement embodied in the Scheme of Amalgamation (being Exhibit 'C' to the Petition) being Schedule I hereto, and declare the same to be binding on the Petitioner Company, the Transferor Company, and also their respective shareholders and creditors AND THIS COURT DOTH ORDER that upon the coming into effect of this Scheme and with effect from the Appointed Date and subject to the provisions of this Scheme, all the Assets of the Transferor Company comprised in the Undertaking shall, pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in the Petitioner Company as a going concern so as to become, as and from the Appointed Date, the undertakings, business, properties and assets of the Transferee Company AND in respect of such of the properties and assets of the Transferor Company as are movable in nature and capable of transfer by manual delivery or by endorsement or endorsement and delivery, the same may be so transferred by the Transferor Company to the Transferee Company, to the end and intent that the property in such movable properties and assets shall, upon such manual delivery or endorsement or endorsement and delivery, as the case may be, pass to the Transferee Company and thereupon such moveable properties and assets shall become the properties and assets of the Transferee Company AND with respect to

book-debts, outstanding loans and advances, receivables, bank balances and deposits, if any, due to the Transferor Company by any person or authority, the Transferee Company and if so required, the Transferor Company shall give notice in such form as they may deem fit to each such debtor or depositee that pursuant to the sanction by this Court of the Scheme under Sections 391 to 394 of the Act, the said debt, loan, advance or deposit be paid, made good or held on account of the Transferee Company as the person entitled thereto in place of the Transferor Company and that appropriate entry should be passed in its books to record the aforesaid change and without prejudice to the generality of the Scheme, all assets, properties, estate, right, title, interest, licenses and authorities, permits, fuel linkages, quotas, approvals, permissions, incentives, sales tax deferrals, loans or benefits, subsidies, concessions, grants, claims, leases, tenancy rights, liberties and other assets, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Company and/or all rights and benefits that have been acquired or that have arisen or accrued or which may arise or accrue to the Transferor Company after the Appointed Date and prior to the Effective Date in connection or in relation to the operation of the Undertaking shall, pursuant to Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in the Transferee Company and shall remain

valid, effective and enforceable on the same terms and conditions to the extent permissible under law.

6. AND THIS COURT DOTH FURTHER ORDER that upon the coming into effect of this Scheme and with effect from the Appointed Date, all Liabilities of the Transferor Company comprised in the Undertaking outstanding or subsisting on the Effective Date shall, pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in, so as to become, as and from the Appointed Date, the liabilities of the Transferee Company, and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such Liabilities have arisen in order to give effect to the provisions of this Clause.

7. AND THIS COURT DOTH FURTHER ORDER that in so far as the Assets of the Transferor Company are concerned, the existing securities, mortgages, charges, encumbrances or liens (hereinafter referred to as the "**Encumbrances**") over the Assets or any part thereof transferred to the Transferee Company in terms of this Scheme and relating to any Liabilities of the Transferor Company shall, after the Effective Date, without any further act or deed,

continue to relate or attach to such Assets or any part thereof but such Encumbrances shall not relate or attach to any of the assets and properties of the Transferee Company or any part thereof, save to the extent warranted by the terms of any existing security arrangements to which both the Transferor Company and the Transferee Company are party, and consistent with the joint obligations assumed by them under such arrangements or unless specifically agreed to by the Transferee Company of the Scheme, it is clarified that the transfer and vesting of the assets and properties of the Transferor Company in terms of the Scheme shall be subject to the existing Encumbrances thereon and with effect from the Effective Date, any reference in any security documents or arrangements (to which the Petitioner Company is a party) to the Transferor Company and its assets and properties shall be construed as a reference to the Transferee Company and the assets and properties of the Transferee Company, provided always that any such Encumbrances shall extend only to and over the assets and properties of the Transferor Company transferred to and vested in the Transferee Company pursuant to this Scheme and not any other assets and properties of the Transferee Company unless agreed to by the Transferee Company with the concerned secured creditors of the Transferor Company, AND in so far as the existing securities, mortgages, charges, encumbrances or liens over the assets and properties of the Transferee Company or any part thereof and relating to liabilities of the Transferee Company are concerned, such

securities, mortgages, charges, encumbrances or liens shall continue to relate or attach to such assets and properties of the Transferee Company or any part thereof but such securities, mortgages, charges, encumbrances or liens shall not extend to, or relate or attach to, any of the assets and properties of the Transferor Company or any part thereof transferred to the Transferee Company, save to the extent warranted by the terms of any existing security arrangements to which both the Transferor Company and the Transferee Company are party, and consistent with the joint obligations assumed by them under such arrangements or unless specifically agreed to by the Transferee Company.

8. AND THIS COURT DOTH FURTHER ORDER that with effect from Appointed Date and up to the Effective Date, the Transferor Company shall carry on and shall be deemed to have carried on all its business and activities as hitherto and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Undertaking on account of, and for the benefit of and in trust for, the Transferee Company, also all the profits or incomes accruing or arising to the Petitioner Company, and all expenditure or losses arising or incurred (including all taxes, if any, paid or accruing in respect of any profits and income) by the Transferor Company shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes and expenditure or losses and taxes of the

Transferee Company, as the case may be.

9. AND THIS COURT DOTH FURTHER ORDER that upon the coming into effect of this Scheme, all suits, actions and legal proceedings by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and/or enforced by or against the Transferee Company on and after the Effective Date, as effectually and in the same manner and to the same extent as if the same had been pending and/or arising by or against the Transferee Company AND the Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Company referred to in above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company AND THIS COURT DOTH FURTHER ORDER that upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments (including all tenancies, leases, licenses and other assurances in favour of the Transferor Company or powers or authorities granted by or to it) of whatsoever nature to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect on the Effective Date, shall, without any further act, instrument or deed, be in full force and effect in favour of or against the Transferee Company and may be enforced as fully and effectually

as if, instead of the Transferor Company, the Transferee Company had been a party or obligee thereunder AND the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, innovations, declarations, or other documents with, or in favour of any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions AND the Transferee Company shall, be deemed to be authorised to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of the Transferor Company.

10. AND THIS COURT FURTHER ORDER that that upon the coming into effect of this Scheme, all the employees of the Transferor Company in service on the Effective Date, shall become the employees of the Transferee Company on such date without any break or interruption in service and on terms and conditions as to remuneration not less favourable than those subsisting with reference to the Transferor Company as on the said date AND it is clarified that the employees of the Transferor Company who become employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies, and shall not be entitled to avail of any

schemes and benefits that are applicable and available to any of the employees of the Transferee Company, unless otherwise determined by the Transferee Company AND the Transferee Company undertakes to continue to abide by any agreement/settlement, if any, entered into by the Transferor Company with any union/employees of the Transferor Company AND the existing provident fund, gratuity fund, and pension and/or superannuation fund or trusts created by the Transferor Company or any other special funds created or existing for the benefit of the employees of the Transferor Company shall at an appropriate stage be transferred to and form part of the relevant funds of the Transferee Company and till such time shall be maintained separately, and the Transferee Company shall be substituted for the Transferor Company in relation to the administration and operation of those funds AND in the event that the Transferee Company does not have its own fund with respect to any such matters, the Transferee Company shall create its own fund to which the contributions pertaining to the employees of Transferor Company shall be transferred AND THIS COURT FURTHER ORDER that subject to clauses 10.2 and 10.3, of the Scheme, the Transferee Company at the sole option of the respective shareholder of the Transferor Company either pay in cash a sum calculated @Rs.10/- per equity shares for every one equity share held in the Transferor Company on the record date or at the choice of the respective Shareholder, issue and allot one 8% cumulative Redeemable Preference Share of Rs.10/- each for one

equity share held in the Transferor Company on the record date redeemable at par at the end of five years from the date of allotment or any time earlier thereto on Transferee Company giving a notice of 45 days AND THIS COURT FURTHER ORDER that the shares held by the Transferee Company in the Transferor Company shall stand cancelled upon coming into force of the Scheme and such holding shall be treated as cancelled and no new shares of the Transferee Company shall be allotted to them AND THIS COURT FURTHER ORDER THAT in terms of Clause 3.2 of the Scheme, the authorised Capital of the Transferee Company shall be increased from Rs.6,00,00,000/- to Rs.20,50,58,000/- for which the Transferee Company shall file Form 5 alongwith necessary stamp duty and fees in terms of Section 97 of the Companies Act 1956, with the Registrar of the Companies within the stipulated period and this Court further order that the Transferor Company shall stand dissolved without winding up with effect from the effective date.

11. AND THIS COURT FURTHER ORDER that the Petitioner Company do file within 30 days from the date of sealing of the certified copy of the order sanctioning the Scheme of Amalgamation with the Registrar of Companies, Panaji for registration under Section 391 of the Companies Act, 1956 and on the Registrar of Companies, Panaji transferring all the files, documents and records relating to the Transferor Company to the Registrar of Companies, Panaji, shall

register with him all the files, documents and records relating to the Transferor Company on the files kept with him in relation to the Transferor Company and shall consolidate all files, documents and records of the Transferor Company with that of the Transferee Company.

12. AND THIS COURT DOTH FURTHER ORDER that liberty is reserved to the Petitioner Company and to all other persons interested in this Petition to apply to this Honourable Court herein as and when occasion may arise for any direction that may be necessary to ensure that the said Scheme of Amalgamation is fully and effectually carried out.

13. AND THIS COURT DOTH ORDER that the Petition is allowed in terms of Prayer Clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i).

14. AND THIS COURT DOTH LASTLY ORDER the Petitioner Company do pay a sum of Rs. 2500/- to the Regional Director and a sum of Rs.2500/- to the Official Liquidator towards the costs of the said Petition.

B.H.MARLAPALLE, J.

ssm.